THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.766 of 2007

Dated: 25.01.2007

Between:

Dr.P.Chandra Mohan.

..... PETITIONER

AND

The District Panchayat Officer, Machilipatnam, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.766 of 2007

ORDER:

The petitioner is resident of Vuyyuru town. He is a Doctor and owner of a hospital/nursing home in Katuru Road of Vuyyuru. Second respondent issued a notice dated 26.09.2006 alleging that the petitioner encroached road margin to an extent of Ac.0.02 ½. When the objections are not considered, the petitioner filed W.P.No.26702 of 2006. By an order dated 22.12.2006, this Court disposed of said writ petition directing second respondent to consider the objections submitted by the petitioner. Immediately thereafter on 23.12.2006, second respondent issued a notice calling upon the petitioner to remove the alleged encroachment within twenty-four hours. However, after receiving the copy of the order dated 22.12.2006 passed by this Court, second respondent passed orders in proceedings ROC No.106/2006, A3 dated 06.01.2007 directing the petitioner to remove the encroachment to the extent of Ac.0.02 ½ cents of public road margin by closing the drain within a period of three days from the date of receipt of a copy of said order.

The learned counsel for the petitioner strenuously contends that when the survey was conducted by the surveyor, no notice was issued to the petitioner. He would urge that the petitioner has been in possession of the entire extent of land and he would never encroach upon road margin or drain as alleged. He submits that if fresh survey is conducted, it would demonstrate that no encroachment is made by him.

Per contra, the learned Assistant Government Pleader for Panchayat Raj and Rural Development and the learned standing counsel for Gram Panchayat submit that against the impugned order dated 06.01.2007, an appeal would lie under Section 128(2) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity). In view of this, writ petition is not maintainable.

A perusal of the impugned order dated 06.01.2007 would show that the Mandal Surveyor conducted survey to determine the encroached road portion as contemplated under G.O.Ms.No.555 and that as per the report and sketch plan furnished by the Mandal Surveyor, the petitioner is allegedly in encroachment of Ac.0.02 ½ cents of road margin causing public inconvenience and traffic congestion. This is certainly a question of fact, which cannot be decided in this writ petition at present. The petitioner disputes the findings of the Mandal Surveyor. Therefore, it would be in the interest of the petitioner to approach first respondent to prefer an appeal under Section 128(2) of the Act. As and when such appeal is filed, first respondent may disposed of the appeal within a period of three weeks thereafter, if necessary, by ordering fresh

survey in the presence of the petitioner. Till then, the respondents shall not take any coercive action for removing the cement poles or the compound wall. The petitioner is given a week's time to prefer the appeal.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

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(**V.V.S.RAO, J**)

25th January, 2007

Note: Issue CC by 27.01.2007.

B/o

ghn